

Message

From: Bouma, Stacey [Bouma.Stacey@epa.gov]
Sent: 11/26/2018 3:52:02 PM
To: Able, Tony [Able.Tony@epa.gov]; Wetherington, Michele [Wetherington.Michele@epa.gov]
CC: Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]; Petter, Lauren [Petter.Lauren@epa.gov]; Cooper, Jamal [cooper.jamal@epa.gov]
Subject: RE: OST mtg re FW: GA Narrative WQS Update

We're meeting with OST on Wednesday. I suggest waiting until after that meeting before providing this additional background.

Stacey L. Bouma, Chief
Water Quality Standards Section
EPA Region 4 Water Protection Division
(404) 562-9392

From: Able, Tony
Sent: Monday, November 26, 2018 10:48 AM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Petter, Lauren <Petter.Lauren@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Subject: Re: OST mtg re FW: GA Narrative WQS Update

Do I need to share this with JG and the Deputies before today's meeting with the states

Tony Able
Acting Chief
Water Quality Planning Branch
US EPA R4

On Nov 26, 2018, at 10:29 AM, Wetherington, Michele <Wetherington.Michele@epa.gov> wrote:

This is what I wrote to Tom Glazer in OGC regarding the court case:
The court case is about their previous standard before the word unreasonably was added and the Ct of Appeals held that GA's interpretation was entitled to deference. GA then added in the word and sent it to us. The case is in state court not federal, and the region does not think the court case is determinative of our action. We have no problem with GA interpreting their prior narrative to include a reasonableness standard and would defer to the state's interpretation of its WQS. If the GA Supreme Court reverses to hold that GA's interpretation was not entitled to deference and GA could not interpret their old narrative using a reasonableness standard, we still have a revised WQS before us, now with even less justification from the state. GA's point in submitting this case to us is that the revision is not a substantive change, but the Region disagrees with that assertion up through the level of our old RA. In addition, we were working on this to meet our statutory deadline as we had been directed, although it has now passed.

Mita and I don't see why we would wait for the GA Supreme Court on this. I'm not planning to run that up any higher (again) just yet, I'm thinking we need OST agreement that this is a substantive change as step 1.

Thanks,

Michele

From: Gordon, Lisa Perras
Sent: Monday, November 26, 2018 7:15 AM
To: Bouma, Stacey <Bouma.Stacey@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>; Petter, Lauren <Petter.Lauren@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>
Subject: RE: OST mtg re FW: GA Narrative WQS Update

Stacey,

I've read through the notes this morning on the GA Narrative beginning with Michele's summary of OGC's concerns. As we get ready to talk to OST, just a reminder that in the 2000 Coordination memo with HQ, the need to review disapprovals is based on a concern that the disapproval could, "possibly bind the Administrator to a rulemaking..." or set new national policy. Those are valid concerns.

However, neither apply in this case where the disapproval is based on insufficient information submitted under 131.6. In this case, the state rules revert back to their previous EPA-approved version with no need for a rulemaking by EPA. Disapprovals for insufficient information has been used on multiple times both here and in other Regions, so it does not set new policy.

Michele, would the Georgia Supreme Court decision – no matter how it turned out – affect our ability to do a review for scientific justification for new submittals? I was unclear how it would impact our action based on the write-up.

Thanks all, Lisa

Sent: Wednesday, November 21, 2018 1:11 PM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>; Petter, Lauren <Petter.Lauren@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Able, Tony <Able.Tony@epa.gov>
Subject: OST mtg re FW: GA Narrative WQS Update

I contacted Sara Ludwig-Monty re the OGC recommendation for OST and R4 staff to discuss the GA narrative taking into consideration the court case. She is going to try and set up a meeting for later next week (maybe Wed or Thur) to include Erica, Tom, and Corey.

From: Bouma, Stacey
Sent: Tuesday, November 20, 2018 3:59 PM
To: Able, Tony <Able.Tony@epa.gov>; Zapata, Cesar <Zapata.Cesar@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Subject: FW: GA Narrative WQS Update

See below. Additionally, I shared the legal analysis, that was shared with OGC, with OW OST on Friday, Nov 16. At that time, I indicated verbally that staff had made a recommendation (Nov 7 DD briefing) for the RA's consideration. This was prior to the information below concerning the GA Supreme Court case.

From: Wetherington, Michele
Sent: Tuesday, November 20, 2018 3:44 PM

To: Bouma, Stacey <Bouma.Stacey@epa.gov>

Subject: GA Narrative WQS Update

Matt Leopold was interested in the revision when Leif mentioned it on Thursday's OGC call. David F. asked for info on the revision from OGC. Tom Glazer is the staff attorney assigned from OGC. Tom talked to David today about the revision. OGC agrees with waiting for the acting RA to agree or disagree with the staff recommendation of a partial disapproval, however OGC also is contemplating waiting for the GA Supreme Court to make a decision on the state court case that has been appealed from the Court of Appeals, regarding deference to GA's interpretation of its narrative before the revision was made. OGC also said OST should weigh in on whether GA's revision is substantive or non-substantive. OGC recommends a staff level call between the Region and HQ once staff are back after the holiday.

Michele

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